

Brij Mohan Singh Chopra

Vs

State of Punjab

Civil Appeal No. 7427 of 1983

(K. N. Singh, E. S. Venkataramiah JJ)

11.03.1987

JUDGMENT

K. N. SINGH, J. -

1. This appeal is directed against the order of the High Court of Punjab and Haryana dismissing the appellant's petition made under Art 226 of the Constitution challenging validity of the Punjab Government's Order dated March 19, 1980 retiring the appellant prematurely from service.
2. The appellant after having obtained First Class M. Sc. (Technology) degree from Banaras Hindu University in 1950 was awarded Gandhi Memorial Scholarship by the Government for study and training in France for a period of three years. On his return from abroad he was appointed as Superintendent Quality Marketing Centre (Scientific Instruments) of the Government of Punjab. In 1963 he was promoted to the post of Deputy Director (Technical). In 1968 he was promoted to the post of Joint Director (Industries), which post he continued to hold till he was prematurely retired by Government order dated March 19, 1980 issued in exercise of power under rule 3 of the Punjab Civil services (Premature Retirement) Rules, 1975 (hereinafter referred to as the Rules). The appellant made a representation against the order of premature retirement to the Government but the same was rejected; thereupon the appellant challenged the validity of the Government order by means of a writ Petition under Article 226 of the Constitution before the High Court, which was dismissed in limine by the High Court on August 5, 1981.
3. The learned counsel for the appellant contended that the Government decision to retire the appellant prematurely was arbitrary and unreasonable as the appellant's service record has all along been good and there was no material before the appropriate authority on the basis of which the requisite opinion that the appellant's premature retirement was necessary in public interest, could-be formed. He urged that the appellant had earned consistent good entries for the last 5 years, but the competent authority relied on some adverse entries of remote past to retire the appellant. Learned counsel further urged that appellant's representation against some of the adverse entries which had been considered against him was pending and the same had not been considered and disposed of. Those entries should not have been considered against the appellant. On the other hand learned counsel appearing for the State urged that the appellant's work and conduct was not satisfactory and that the State Government having considered the over all service record of the appellant formed the requisite opinion bona fide that the appellant's premature retirement was necessary in public interest. In support of his contention he placed the service record before the Court and referred to a number of adverse entries earned by the appellant during his service career to which we shall make reference at a later stage.

4. The purpose and object of premature or compulsory retirement of government employee is to weed out the inefficient, corrupt, dishonest or dead wood from the government service. This right of the government is well established which is generally exercised in accordance with relevant service rules. The scope and ambit of exercise of this absolute power depends on the provisions of rules and it is always subject to Constitutional limitations. In the instant case the appellant was prematurely retired in exercise of power under Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975; it would therefore be necessary to have a look at these provisions. Rule 3 reads as under :

3. Premature retirement. - (1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice not be less than three months.

Provided that where at least three month's notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, all the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

(2) Any government employee may, after giving at least three months' previous notice in writing to the appropriate authority, retire from service on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

5. The above rule invests absolute right in the appropriate authority to retire an employee prematurely on his completion of 25 years of qualifying service or 50 years of age. The appropriate authority as defined by Rule 2 means the authority which has the power to make substantive appointment to the post or service from which the government employee is required to retire. Before a government employee is retired in exercise of power under this rule it is necessary that the government servant must have completed 25 years of qualifying service or he must have attained 50 years of age and further he must be given three month's notice in writing. The rule does not lay down any criteria, guidelines for the exercise of power, although public interest is specified in the rule, which means power has to be exercised in the public interest only. The public interest in relation to public administration envisages retention of honest and efficient employees in service and dispensing with the services of those who are inefficient, deadwood or Corrupt and dishonest. Therefore the rule contemplates premature retirement of the inefficient, corrupt or deadwood which would subserve the public interest.

6. Since the rule does not contain any further guidelines, the State Government issued a government order on September 26, 1975 laying down the guidelines and the procedure necessary to be followed in exercising powers under Rule 3 for premature retirement of a government employee.

The order stated that the appropriate authority should utilise the power under Rule 3 in a judicious manner to retire a government employee on formulating its opinion by scrutiny of the confidential reports of the employee and by taking into consideration any other substantial material it may have before it. The order further stated that it was not feasible to lay down any absolute terms as to how many adverse entries about inefficient or lack of integrity would justify the premature retirement but it laid stress that the service record as a whole would determine the merit of each case. Paragraph 6 of the letter further stated that remoteness of an adverse entry, the scrutiny of the service record of the employee concerned such as crossing of efficiency bar, confirmation and promotion to a higher post for any other meritorious service rendered by the employee, would have their relative importance. The order emphasizes that the appropriate authority may consider premature retirement of a government employee if it has reasonable cause to believe that the employee concerned was lacking in integrity irrespective of the assessment of ability and efficiency in work. It further provides that the appropriate authority should review the causes of employee on their completing 25 years of qualifying service or their attaining 50 years of age. The government issued another order on August 4, 1978 pointing out that while exercising power under Rule 3 the service of an employee as a whole would determine the merit of each case but if there was a single entry describing the employee concerned as a person of doubtful integrity, that would justify the premature retirement under the rules. The executive instructions issued as contained in these two government orders provide sufficient guidance for the exercise of power under Rule 3. According to these instructions the service record of an employee has necessarily to be considered while taking decisions for the premature retirement of an employee and if there was a single entry casting doubt on the integrity of the employee, the premature retirement of such an employee would be in public interest. In the absence of any details by which the question of public interest could be determined in the rules it was open to the State Government to issue the executive instructions for the guidance of appropriate authority to exercise the power of premature retirement and the instructions so issued as contained in the aforesaid government orders have binding character.

7. In the counter-affidavit filed on behalf of the State of Punjab it is asserted that the appellant during his service with the industries department earned adverse remarks in the annual confidential reports on his work and conduct for the years 1960-61, 1963-64, 1964-65, 1969-70, 1970-71, 1971-72, 1972-73 and 1975-76 which indicate that the overall service record of the appellant was bad and his integrity was frequently challenged. It has been further stated that these entries were taken into consideration in retiring the appellant. No other material was considered against the appellant. According to the respondents the appellant's service record as a whole was taken into consideration and thereupon it was found that he had earned a number of adverse entries which indicate that his inefficiency and for that reason it was considered necessary to retire him prematurely in public interest. We have been taken through the adverse entries by the lord counsel appearing for the state as he placed the service record before us. On a perusal of the same we find that the respondents took into consideration some of the adverse entries which related to remote past prior to the promotion of the appellant to the post Joint Director (Industries). It is now settled that adverse entries if any, awarded to an employee lose their significance on or after his promotion to a higher post. The adverse entries awarded to the appellant prior to 1968 could not therefore be taken into consideration and therefore the adverse entries for the years 1960-61, 1963-64, 1964-65 could not legally be taken into consideration in forming the requisite opinion to retire the appellant prematurely from service. It is now well settled that while considering the question of premature retirement it may be desirable to make an overall assessment of the government servant's record, but while doing that, more value should be attached to the confidential reports pertaining to the years immediately preceding such consideration. It is possible that new entrant a service may have

committed mistakes and for that reason he may have earned adverse entries and if those entries of early years of service are taken into consideration for prematurely retiring Governmental employee then perhaps no employee would be safe even though he may have brilliant record of service in later years. This aspect was emphasised by this Court in a number of cases namely, Baldev Raj Chandha V. Union of India ((1981) 1 SCR 430 : (1980) 4 SCC 321 : 1981 SCC (L&S) 1 : (1980) 2 LLJ 459), Brij Bihari Lal Agarwal V. High Court of M. P. ((1981) 2 SCR 297 : (1981) 1 SCC 490 : 1981 SCC (L&S) 238 : 1981 Lab IC 137) Amar Kant Choudhary V. State of Bihar ((1984) 2 SCR 299 : (1984) 1 SCC 694 : 1984 SCC (L&S) 173 : (1984) 1 LLN 249) and J. D. Srivastava V. State of M. P. ((1984) 2 SCR 466 : (1984) 2 SCC 8 : 1984 SCC (L&S) 206 : AIR 1984 SC 630) This Court has consistently taken the view that old and stale entries should not be taken into account while considering the question of prematurely retirement instead; the entries of recent past five to ten years should be considered in forming the requisite opinion to retire a government employee in public interest. It would be unreasonable and unjust to consider adverse entries of remote past and to ignore the good entries of recent past. We are therefore of the opinion that if entries for a period of more than 10 years past are taken into account it would be an act of digging out past to get some material to make an order against the employee. In view of this we would confine our scrutiny to the appellant's record of service for the last 10 years prior to the date on which he was prematurely retired.

8. We would now examine the appellant's service record for the last 10 years. On a perusal of the same we find that the appellant was awarded adverse remarks for the years 1971-72 and 1972-73 and for the rest of the years he was not awarded any adverse remarks. On the other hand for the years 1974-75 and 1975-76 the reporting officer rated him as a 'very good' officer although the reviewing officer treated him as 'average'. In 1976-77 the reporting officer rated him as a 'good' officer while the reviewing officer rated him as an 'average'. For the years 1977-78, 1978-79 and 1979-80 the reviewing officer assessed his work and conduct 'good'. During the last 5 years of his service the appellant had earned good entries which are commendable in nature. Except the two entries awarded to him for the years 1971-72, 1972-73 the appellant has not earned any adverse entry reflecting upon his work and conduct. It is significant to note that in none of these entries his integrity was doubted. So far as the adverse entries for the years 1971-72 and 1972-73 are concerned the appellant has asserted that even though he had filed representations in accordance with the rules against those entries and his representations had not been considered or disposed of, but the appropriate authority considered those entries against him. In the counter-affidavit filed on behalf of the State it is conceded that the appellant had filed representations against the aforesaid two entries, but the two representations could not be disposed of as the representations were not traceable on the government file. The fact however remains that the appellant had filed representations against the aforesaid adverse entries and the receipt of the representations is admitted by the government but those representations were kept pending.

9. The question which falls for consideration is whether the aforesaid two entries could be taken into consideration in forming the requisite opinion to retire prematurely the appellant from service. There is no doubt that whenever an adverse entry is awarded to a government servant it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse are justified or not. Making of a representation is a valuable right to a government employee and if the representation is not considered, it is bound to affect him in his service career, as in government service grant of increment, promotion and ultimately premature retirement all

depend on the scrutiny of the service records. In *Gurdial Singh Fijji V. State of Punjab* ((1979) 3 SCR 518 : (1979) 2 SCC 368 : 1979 SCC (L&S) 197 : 1979 Lab IC 1186) the appellant therein was denied promotion on account of certain adverse entries against which he had made representation to the government but for some reason or the other those representations could not be considered or disposed of. In view of those adverse entries he was not selected for promotion. This Court while considering the effect of non-consideration of the representation observed : (SCC p. 376, para 17)

The principle is well settled that in accordance with the rules of natural justice, an adverse report in confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for some reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the government has not been able to consider his explanation and decide whether the report was justified.

10. After the aforesaid observation this Court directed the State Government to consider and dispose of the representation made by the appellant and thereafter the Selection Committee was directed to consider his case afresh. In *Amar Kant Choudhary V. State of Bihar* ((1984) 2 SCR 299 : (1984) 1 SCC 694 : 1984 SCC (L&S) 173 : (1984) 1 LLN 249) the Court again emphasized that adverse report in confidential role cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Unless the representation against the adverse entry is considered and disposed of it is not just and fair to act upon those adverse entries. These decisions lay down the principle that unless an adverse report is communicated and representation, if any, made by the employee is considered, it cannot be acted upon to deny promotion. We are of the opinion that the same consideration must apply to a case where the adverse entries are taken into account in retiring an employee prematurely from service. It would be unjust and unfair and contrary to principles of natural justice to retire prematurely a government employee on the basis of adverse entries which are either not communicated to him or if communicated representations made against those entries are not considered and disposed of. The appellant had submitted his representations against adverse entries for the years 1971-72 and 1972-73 and admittedly those representations were not considered and disposed of and yet the appropriate authority considered those entries in forming opinion that the appellant's premature retirement was in the public interest. We are, therefore, of the opinion that for this reason the order of the State Government is not sustainable in law.

11. Though the entire service record of an employee may be considered while considering the question of his premature retirement, but if the service record of the last 10 years of his service do not indicate any deficiency in his work and conduct it would be unjust and unreasonable to retire him prematurely on the basis of entries which may have been awarded to him prior to that period. In *Baldev Raj Chandha V. Union of India* ((1981) 1 SCR 430 : (1980) 4 SCC 321 : 1981 SCC (L&S) 1 : (1980) 2 LLJ 459) this Court held that if an officer had earned no adverse entries at least for five years immediately before the compulsory retirement, he cannot be cashiered on the score that long years ago his performance had been poor. It appears that the State of Punjab realised that premature retirement of an employee on the basis of entire service record which may include stale entry, would be unreasonable and it therefore issued government order on June 22, 1981 directing that under the Punjab Civil Services (Premature Retirement) Rules, 1975 it would not be desirable to scrutinize the

entire service record of an employee and premature retirement should not be ordered if during the last 5 years the work and conduct of the employee have been good. This direction was no doubt issued after the appellant was prematurely retired in March 1980 but nonetheless it is apparent that the government had changed its policy in accordance with the decisions of this Court and it had taken a decision not to retire a Government servant if his service record for the last five years did not contain any adverse remarks. The appellant had not earned any adverse remarks during the last five years of service, on the other hand he had earned 'good' and 'very good' entries during those years. In this view the government's decision to retire the appellant prematurely in exercise of the power under Rule 3 is not sustainable in law.

12. We accordingly allow the appeal, set aside the order of the High Court, quash the government order dated March 19, 1980 and direct that the appellant shall be treated as being in service without break. He is entitled to his salary, allowances and such other benefits as may be admissible to him under the rules. The respondent shall pay the costs of the appeal to the appellant.

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